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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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JUL 22 1981

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

Your letter of April 7, 1981, requested our views on S. 719, 97th Congress, 1st Session, the proposed "Consultant Reform and Disclosure Act of 1981." This bill would, among other things

- amend section 3109 of title 5, United States Code, to clarify the authority for appointment and compensation of experts and consultants and
- provide statutory guidelines concerning the award of contracts for the procurement of consulting services, management and professional services, and special studies and analyses.

The General Accounting Office's (GAO) concern about the Government's use of consulting services is evidenced by over 30 audit reports we have issued on this subject during the last 20 years. These reports identified the need for almost every major Federal agency to better manage these services. Although we continue to believe that the proper use of consulting services is a legitimate and economical way to conduct Government operations, we see little evidence that agencies are acting administratively to correct abuses. Our recent report, "Government Earns Low Marks on Proper Use of Consultants," FPCD-80-48, June 5, 1980, concluded that many of the same problems that existed as far back as 1961 exist today. Normally, we do not support legislative remedies for problems that could be resolved administratively. However, since executive branch agencies, with few exceptions, have not acted administratively, we believe congressional action is necessary. Accordingly, we can support S. 719 if certain suggested changes are made.

As you know, we did not support the previous version of this bill introduced in the 96th Congress, S. 2380, partly because of our concern that it could unduly constrain agencies' ability to obtain valuable consulting expertise from the private sector. However, the current bill, S. 719, has incorporated

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most of the suggestions made during our testimony on S. 2880 before your committee on August 19, 1980. For the most part, S. 719 adequately balances the public's need for assurance that Federal funds for consulting services will be spent properly with the agencies' need to use these services, where appropriate, to carry out Federal programs. Our comments on specific sections follow the order they appear in title II of the bill.

Section 203

This section would require agencies to disclose certain information on each report prepared by a contractor and on agency reports which are substantially derived from or include substantial portions of contractors' reports. We believe the information required by the bill would be useful but would suggest that another disclosure provision be added to require a brief description of the work performed by the contractor (e.g., data collection, data analysis). We believe this information would help show the potential for contractor personnel to influence the report's conclusions and recommendations.

Section 204

This section would require a written agency evaluation of consulting and professional service contracts in excess of \$50,000.

Our March 20, 1980, report on consulting service contracts supports the need for such evaluations. ^{1/} We believe it is critical for agencies to assess the quality and use made of consulting services, including an appropriate justification for failing to use the results of these services.

We reviewed 60 completed contracts and found that one-third were of questionable or marginal value to the agencies. Previous GAO studies, dating back to 1961, as well as the Commission on Government Procurement, have found that many Federal agencies do not, for various reasons, fully use reports prepared under Federal consulting service contracts. Accordingly, we would suggest that the scope of this section be expanded to include a requirement for agencies to evaluate the actions it took in response to any consultant's report containing recommendations to agency officials. If no action was taken on the recommendations, the reasons should be stated in the evaluation. Also, we believe the evaluations should be approved by an agency official at least two levels above that of the program manager responsible for monitoring the consultant's performance to help assure the objectivity and quality of the evaluations.

^{1/}"Controls Over Consulting Service Contracts At Federal Agencies Need Tightening" (PSAD-80-35, Mar. 20, 1980).

Section 205

This section would require, for a 3-year period after enactment, that all potential contractors with the Departments of Energy and Transportation and the Environmental Protection Agency disclose all relevant facts relating to an existing or potential organizational conflict of interest concerning proposed contracts. A designated office in each agency would then evaluate each statement submitted and determine whether an actual conflict or the appearance of a conflict existed and, if so, send written notification of that determination to the offeror. The offeror could then transmit additional information to the head of the agency with a request for review of the original determination. If the original determination is not reversed by the head of the agency, three options would be available: (1) disqualify the contractor from eligibility for award of the proposed contract, (2) award the contract with special contractual provisions to avoid conflicts, or (3) award the contract, if the needed services cannot be obtained elsewhere, but make the relevant facts and circumstances concerning the conflict available to the public and the congressional committees with legislative jurisdiction over the agency.

With one exception, we fully support this section of the bill. It is consistent with our August 1980 testimony that suggested the conflict-of-interest provision be tested at selected agencies for a period of time before applying it Government-wide. The exception concerns section 205(h) which would require GAO, in conjunction with the Director, Office of Management and Budget, to evaluate agencies' implementation of this section and report the results to the Congress with recommendations for continuing, modifying, or terminating the provisions of the section. This evaluation would be required to begin 2 years after the bill's enactment and the report issued within 9 months later.

As a general policy, we do not support legislative requirements for GAO audits or evaluations of a particular program. Under section 312(a) of the Budget and Accounting Act of 1921, as amended (31 U.S.C. 53), the Comptroller General has authority to investigate and report on "all matters relating to the receipt, disbursement, and application of public funds." Section 204(a) of the Legislative Reorganization Act of 1970, as amended (31 U.S.C. 1154(a)), directs the Comptroller General to "review and evaluate the results of Government programs and activities carried on under existing law." In our opinion, this existing legislation gives us adequate authority to make the evaluation that would be required by this bill. Furthermore, committees having jurisdiction may request our Office to perform desired reviews. We believe such an arrangement, in lieu of a specific legislative requirement, would be mutually advantageous because it would permit us, through discussions with the committee, to

reach agreement on the scope and timing for our initial audit efforts and thus concentrate on the matters of greatest concern to the committee. Accordingly, we recommend that the requirements for the GAO audit be deleted from the bill.

Section 206

This section would, among other things, require the President's budget transmitted to the Congress each fiscal year to set forth separately, within each subfunctional category, the amount of funds for (1) consulting services, management and professional services, and special studies and analyses and (2) all other procurements. Although we support the purpose of this provision to provide the Congress with more information on indirect Federal work force costs, we would prefer an alternative to the proposed change in budget subfunction groupings. We believe this alternative will provide the Congress with more information on the indirect work force, of which consulting services, management and professional services, and special studies and analyses are only a part. Other contract services include such things as janitorial and guard services.

In a March 31, 1981, letter to the Chairwoman, Subcommittee on Human Resources, House Committee on Post Office and Civil Service, we stated the preferred alternative would be to revise the present object class structure to give a clearer and more detailed breakdown of Federal contract work force costs. It would be necessary to add several new object classes to replace the large vague category called "other services" which was more than \$60 billion in fiscal year 1980. There will also be the need to separate the obligation amounts into those incurred between Government agencies and those involving non-Government sources. Current budget justification documents will need to be revised and standardized to include, by agency and by program, a more detailed presentation directed specifically at total work force costs. To accommodate these changes, it will also be necessary for the Office of Management and Budget and agencies to revise their budget instructions, forms, and systems. Once these changes are in place, all branches of Government will be able to address any congressional limitations on total work force costs through language in appropriation acts. We prefer this alternative because changes to the object class structure can build a solid foundation for any subsequent changes to the subfunctional budget categories.

While this is an alternative we prefer, we also recognize there are several limitations, primarily the need for the executive branch to develop a detailed implementation plan and the length of time needed to phase in the new structure. Since it will take several budget cycles to successfully accomplish this alternative, it must be considered a long-term effort.

Section 207

This section would provide in law a requirement for a Federal Procurement Data System to collect and disseminate information on all contracts entered into by each agency. The system would be required to classify every contract or contract modification over \$10,000 as either for professional services or for commercial and industrial type activities and include for each such contract or contract modification many different items of information.

We suggest two changes to this section. The first change concerns the requirement to classify each contract as either professional services or commercial and industrial type activities. These two categories of contracts are not mutually exclusive. For example, a contract for professional services could also be considered a commercial and industrial activity in Office of Management and Budget Circular A-76 (March 29, 1979). We believe more appropriate categories would be (1) contracts for goods and (2) contracts for services.

The second suggested change concerns the requirement for the system to include a brief description of the work to be performed under each contract. The data system does not currently have detailed descriptions of the specific product or service being purchased. Rather, the system has hundreds of standard categories of goods and services, and agencies select the one category that best describes the goods or services being purchased (e.g., "cost benefit analyses" contract or "regulatory" study contract). We are not aware of any demand for more detailed descriptions and are concerned that the cost to provide this additional information on about 400,000 Federal contract actions annually may exceed the benefits. The General Services Administration, which operates the data system, could probably provide specific data on the costs and benefits to add this requirement.

Section 208

This section would require each agency to prepare a written justification for each consulting (and related service) contract awarded by the agency. Although we support the purpose of this section to strengthen agency justifications for consulting services, the Congress recently enacted legislation, as recommended by GAO, that imposes a similar requirement. Section 307(a) of title III, Public Law 96-304, July 8, 1980, requires agencies to include, in their annual budget justifications to the House and Senate Appropriations Committees, a separate justification for all consulting service funds requested, the appropriation accounts in which these funds are located, and a brief description of how

agency programs can benefit from these services. This should provide adequate assurance that all consulting funds requested are needed to carry out Federal programs and provide the Congress with the necessary budget visibility to question the level of funds requested.

Agencies' first justifications required by this law were only recently completed as a part of the fiscal year 1982 budget process. We believe this legislation should be given a chance to work before imposing the more detailed, extensive justifications required by section 208(2) with the accompanying increase in paper work that it would generate. Accordingly, we believe section 208(2) should be deleted.

Sincerely yours,

Signed

Acting Comptroller General
of the United States